Supreme Court, U.S.
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No. 91-1580

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

OSGOOD TOWER,
Petitioner,

v.

NORTHERN VIRGINIA TRANSPORTATION DISTRICT COMMISSION, Respondent

&

BOARD OF SUPERVISORS, FAIRFAX COUNTY VIRGINIA, Intervenor

PETITION FOR WRIT OF CERTIORARI

PETITIONER'S REPLY MEMORANDUM,

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TABLE OF CONTENTS

	Page Number
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
CORRECTION OF ERRORS IN BRIEF IN OPPOSITION	1

TABLE OF AUTHORITIES

Page Number

Cases

MATCHETT V. Rose 3
344 N.E.2d 770, 779

Reynolds v. Sims 6
377 US 533

References

Black's Law Dictionary 3,4

Treatise on Constitutional Law 5,8
Rotunda, Nowak and Young

Rules of the Supreme Court of
the United States 15.2 24.1(a) 14 1

Rules of the Supreme Court of 4
Virginia 5:39

Virginia Code 8.01-675.2 4
8.01-3D 4
15.1-212 2

Correction of Errors in Brief in Opposition

1. In accordance with Supreme Court of the United States Rules 15.2, 24.1(a), and 14, the Brief in Opposition must include "The questions presented for review." The questions on page i of the Brief are not the questions presented for review; see page i of Tower's petition.

2. The second paragraph of page 2 of the Brief states that the initial decision of the Supreme Court of Virginia to reverse was by a 5-1 majority. This decision was actually 6-1, thereby precluding Fairfax County from selling bonds without voter approval.

3. On page 4 of the Brief, the first paragraph under the Statement of the Case says, "This case arises out of efforts of two citizens to block a proposed bond issue . . . " This is not the case. The

effort was not to block the bond issue. The effort was to have the bond issue conform to the requirements of the Virginia Constitution.

4. On page 5 the second paragraph of the Statement of the Case says, "After the trial court validated the proposed bonds under the Constitution . . ." The bonds were not validated under the Constitution. Judge Middleton, in Attachment C of the Judgment on page A-15 of Tower's Petition, states, "The action before this Court, pursuant to Virginia Code Section 15.1-212 et. seq. is purely a statutory proceeding."

5. Paragraph 3 of the Statement of the Case on page 4 says, "Because of the far reaching implications of the majority opinion, the Commission and the Board, with the support of numerous amici, petitioned for rehearing." The mere

desire to change the initial judgment of the Court is not sufficient reason for a rehearing. Sufficient reasons are listed on page 22 of Tower's petition. Lack of sufficient reasons renders a rehearing meaningless and invalidates a rehearing. Matchett v. Rose, 36 Ill.App.3d 638, 344 N.E.2d 770, 779, quoted in Black's Law Dictionary under Res judicata states, "Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them. constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." The rehearing was without jurisdiction.

6. The second paragraph of page 5 indicates that orally certifying that the petition for a rehearing should be granted complies with Virginia

requirements. This apparently arises from Virginia Rule 5:39 which provides that a rehearing will be granted where one of the justices "is of the opinion" that there is good cause for a rehearing. Virginia Code 8.01-675.2 calls for "certification." not "oral certification." Virgina Code 8.01-3D states that any variance between a Rule of the Virginia Supreme Court and an enactment of the General Assembly shall be construed so as to give effect to such enactment. Common usage, Virginia Supreme Court practice, and Black's Law Dictionary establish "certification" as a written statement. If "oral certification" were intended, the Rule would have so stated, as it is an unusual usage. Black's Law Dictionary does not recognize "oral certification."

7. On page 5, the first paragraph

of the Summary of Argument states, "Petitioners seek this Court's review of the Virginia Court's determination that a bond issue does not constitute debt as defined in the Virginia Constitution." Petitioner Tower seeks no such thing. Tower sought enforcement of his Virginia Constitutional right to vote on contracting obviously long-term debt.

8. On page 5, the first paragraph of the Summary of Argument questions Tower's eligibility to be granted a writ of certiorari. The "Treatise on Constitutional Law" by Rotunda, Nowack and Young, states on page 611, "It is important to remember that the Court's rulings concerning the right to vote have come in terms of equal protection. The decision to find the right to vote to be constitutionally 'fundamental' and subject to a meaningful form of judicial

review may best be described as a substantive due process decision . . ." Reynolds v. Sims, 377 US 533, states, (Headnote 3) "The Constitution of the United States secures the right of qualified voters within a state to cast their ballots and have them counted." "(Headnote 15) "A denial of constitutionally protected rights demands judicial protection; the oath and office of Justice of the Supreme Court of the United States require no less of that court." (Headnote 16) "When a state exercises power wholly within the domain of state interest, it is insulated from federal judicial review, but such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."

9. On page 6 of the Brief, the first

paragraph under -1- says. Tower asks this Court if Fairfax Bond issue constitutes "debt" under the Virginia Constitution; that question only concerns state law. Tower asked no such question. See questions on page i of his petition.

10. The last paragraph on page 6 questions the Supreme Court of the United States' authority to review a matter solely pertaining to state law. The answer affirming the Supreme Court of the United States' authority is in paragraph 8 above.

11. In regard to footnote 1 on page 6. Mr. Goldbecker did not waive all other assignments of error as Justice Lacy said in her November 8. 1991. majority opinion. In a letter to the Court of February 12, 1992, Mr. Goldbecker requested the Supreme Court of Virginia to correct this mistake. Only assignments

of error One and Three were waived. Assignments of error Two and Four were not waived. This can be proved by the official tape of the Supreme Court of Virginia hearings.

12. Pages 7 and 8 of the Brief says that Tower's concerns with procedural due process are only state questions and are of no concern of the Supreme Court of the United States. This is not true. Due process is a fundamental right and is subject to scrutiny by the Supreme Court of the United States. Section 15.7 of Volume 2 of the "Treatise on Constitutional Law" (supra) states, "The list of rights which the Court has found to be fundamental, and, therefore worthy of strict judicial scrutiny is not a long one". . . "Fifth (fundamental right), the Supreme Court (of the United States) has recognized that there is a right to

fairness in procedures concerning individual claims against governmental deprivations of life, liberty, and property." The Brief goes on to say that as Tower has been heard in a meaningful fashion by the Virginia Supreme Court, due process requirements have been fulfilled. This is not true as notice (certification required by statute) was not given. and the treatment of Tower by the Court was not equal to that normally received by other litigants. see Tower's petition (91-1580).

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Supreme Court of the United States No. 91-1580.

CERTIFICATE

I, Osgood Tower, Pro Se. hereby certify that on this 11th day of May, 1992 three copies of the Petitioner's Reply Memorandum in the above-entitled case were mailed first class postage prepaid to Robert L. Howell, Acting County Attorney, Counsel for Fairfax County Board of Supervisors, 4100 Chain Bridge Road, Fairfax, Virginia, 22030; William G. Broaddus. Counsel of Record for Northern Virginia Transportation District Commission, McGuire, Woods, Battle & Boothe, One James Center, Richmond, Virginia 23219; A. Francis Robinson, Jr.. Bond Counsel and Co-Counsel for Fairfax County Board of Supervisors, Brown & Wood, One World Trade Center, New York, NY, 10048. and Fredrick H. Goldbecker, Counsel for Marcia P. Dykes, Box 517. Fairfax VA 22030. I further certify that all known parties to be served have been served.

71

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